

RECEIVED
FEDERAL ELECTION
COMMISSION

2011 MAY -6 AM 10: 39

CELA

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 6427

DATE COMPLAINT FILED: November 8, 2010
DATE OF NOTIFICATION: November 15, 2010
DATE OF LAST RESPONSE: March 21, 2011
DATE ACTIVATED: February 8, 2011

STATUTE OF LIMITATIONS: October 29, 2015

COMPLAINANT: Neil P. Reiff, Counsel to Scott Eckersley for Congress

RESPONDENTS: Unknown Respondents
Billy Long
Billy Long for Congress and Ron Neville,
in his official capacity as treasurer
James Harris
Patrick J. Binning
LakeFront Strategies

RELEVANT STATUTE: 2 U.S.C. § 441h(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

INTRODUCTION

The Complaint alleges that on October 29, 2010, less than a week before the general election, unknown respondents set up a fraudulent email account in the name of Scott Eckersley, a candidate for U.S. House of Representatives in the 7th Congressional District of Missouri, and disseminated a press release email falsely stating that he was suspending his campaign. According to the Complaint, simultaneously with the first media report regarding the fake press release email, James Harris, a political consultant for Eckersley's opponent, Billy Long, disseminated the fake press release on Twitter and later attempted to delete the "tweet."

12044322118

1 Complaint at 1. The Complaint further alleges that a fake Twitter account was set up in
2 Eckersley's name and issued tweets critical of Eckersley. *Id.* at 2. Based on the fake press
3 release email and the fake Twitter account, the Complaint alleges that unknown respondents
4 violated the Federal Election Campaign Act of 1971, as amended ("Act"). *Id.* at 1-2.

5 Further, while the Complainant does not know the identity of the person(s) who set up the
6 fake Twitter account, he alleges that LakeFront Strategies, a political consulting firm that is
7 located a few miles from where the fake press release originated and which issued its own tweets
8 critical of Eckersley, may have been involved because Patrick Binning, the owner of LakeFront
9 Strategies, purportedly has connections to the Billy Long campaign. Complaint at 2. The
10 Complaint notes that soon after press reports of the fake press release emerged, Mr. Binning
11 disabled the website of LakeFront Strategies and the fake Twitter account was deleted as well.
12 *Id.* Finally, in supplemental information provided on February 17, 2011, the Complainant cited a
13 press account purporting to describe false information spread during Billy Long's primary
14 election that a key opponent was withdrawing, causing that candidate to state publicly that he
15 was not doing so.

16 Billy Long for Congress and Ron Neville, in his official capacity as treasurer
17 ("Committee"), filed a joint response with Billy Long and James Harris, a consultant to the
18 Committee ("Long Response"). The Long Response asserts that the candidate, the Committee,
19 and Mr. Harris had no involvement with the distribution of the press release to the media and had
20 no knowledge of the press release prior to its distribution to the media. Long Response at 1.
21 Accompanying the Long Response are sworn affidavits from Billy Long, Ron Neville, and

12044322119

1 James Harris averring that they had no involvement with or knowledge of the press release prior
2 to its distribution. The Long Response requests that the Complaint be dismissed. *Id.* at 3.

3 Patrick J. Binning, owner of LakeFront Strategies, filed a one-page response in which he
4 says that he does not admit or deny any of the allegations in the Complaint. However, he also
5 asserts that he was never a member, agent, or employee of Billy Long for Congress and never
6 received any form of payment or compensation from Billy Long or the Commission. On this
7 basis, Mr. Binning requests that the Commission dismiss this matter with respect to him.

8 Based on the available information, we recommend that the Commission find reason to
9 believe that Unknown Respondents violated 2 U.S.C. § 441h(a). We further recommend that the
10 Commission take no action at this time with respect to Patrick J. Binning and LakeFront
11 Strategies, and Billy Long for Congress and Ron Neville, in his official capacity as treasurer.
12 Finally, we recommend that the Commission find no reason to believe that Billy Long or James
13 Harris violated 2 U.S.C. § 441h(a).

14 II. FACTUAL AND LEGAL ANALYSIS

15 The Act prohibits federal candidates and their employees or agents from fraudulently
16 misrepresenting themselves, or any organization under their control, as speaking or otherwise
17 acting on behalf of any other candidate or political party on a matter which is damaging to such
18 other candidate or party. 2 U.S.C. § 441h(a)(1). *See also* 11 C.F.R. § 110.16(a)(1). Under
19 2 U.S.C. § 441h(a)(2), it is also unlawful to "willfully and knowingly" participate in a plan or
20 scheme to violate 2 U.S.C. § 441h(a)(1). *See also* 11 C.F.R. § 110.16(a)(2).

21 To violate 2 U.S.C. § 441h(a), the Act requires that the violator have the intent to
22 deceive, but does not require that the violator sustain all elements of common law fraud. "Unlike

12044322120

12044322121

1 common law fraudulent misrepresentation, 2 U.S.C. § 441h(a) gives rise to no tort action..." and
2 therefore, proof of justifiable reliance and damages is not necessary. *See Explanation and*
3 *Justification of 11 C.F.R. § 110.16*, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002); *Neder v.*
4 *United States*, 527 U.S. 1, 24-25 (1999) (citing *United States v. Stewart*, 872 F.2d 957, 960
5 (10th Cir. 1989)). Section 441h(a) encompasses, for example, a candidate who distributes letters
6 containing statements damaging to an opponent and who fraudulently attributes them to the
7 opponent. *Explanation and Justification of 11 C.F.R. § 110.16*, 67 Fed. Reg. 76,962, 76,968
8 (Dec. 13, 2002). The Commission has determined that the statutory language "on a matter that is
9 damaging" includes actions or spoken or written communications that are intended to suppress
10 votes for the candidate or party who has been fraudulently misrepresented. *Id.* at 76,968-69.
11 A violation of 2 U.S.C. § 441h(a) does not depend on whether the candidate or party who is
12 fraudulently represented goes on to win an election. *Id.* at 76,969. While the precise harm may
13 be difficult to quantify, harm is presumed from the nature of the communication. *Id.* Proof of
14 financial damages is unnecessary. *Id.*

15 The Commission has emphasized its intention to enforce the Act's prohibition on
16 fraudulent misrepresentation. In MUR 5089 (Tuchman), a four-Commissioner Statement of
17 Reasons ("SOR") noted that "§ 441h violations are among the most egregious transgressions of
18 our Act." MUR 5089 SOR at 2. This SOR was "intend[ed] to put the regulated community on
19 notice that allegations concerning § 441h violations will be taken very seriously and they will be
20 a top Commission enforcement priority." *Id.* at 3.

1 The alleged fake press release email was sent from the address

2 on October 29, 2010 at 7:50 a.m.:

3 FOR IMMEDIATE RELEASE 7:45 A.M. CST,

4 OCTOBER 29TH 2010 — SPRINGFIELD MISSOURI

5 PRESS ADVISORY

6 Eckersley Suspends Campaign for Congress and Withdraws Until Further Notice

7 Due to Personal Matters that have arose [sic] over the last several days, Scott
8 Eckersley who is running for Congress in the [sic] Missouri's 7th Congressional
9 District is Suspending [sic] his campaign until further notice.

10
11 "I am saddened that I am having to do this, however at this time, this is the best
12 decision for myself and my family" said Eckersley. "I would like to thank my
13 supporters for all that they have done for me and I hope that they will understand
14 my decision."

15
16 Complaint Exhibit A.

17
18 Based on the fraudulent press release email, at least one television station reported that

19 Eckersley was suspending his campaign. See Complaint Exhibit B. The fake press release

20 email, sent by Unknown Respondents but allegedly fraudulently attributed to Scott Eckersley,

21 appears to have been intended to suppress votes for Mr. Eckersley in that it stated that his

22 campaign was suspended. As such, the Unknown Respondents who sent the press release email

23 from the account appear to have violated 2 U.S.C. § 441h(a) if

24 those unknown respondents were employees or agents of Billy Long for Congress or any other

¹ According to a press account attached to the Complaint, the real email address for the Eckersley campaign was Campaign@CheckEck.org. See Complaint Exhibit B.

1 federal candidate. The prohibition would also apply to Billy Long himself or to any other federal
2 candidate.²

3 The Complaint attaches postings from a political blog, bungalowbillscw.blogspot.com,
4 which outline possible connections between Patrick J. Binning's political consulting firm,
5 LakeFront Strategies, and the fake press release email and Twitter account, as well as the
6 purported relationship between Mr. Binning and Billy Long for Congress. See Complaint
7 Exhibit E. It appears that Mr. Binning may either live or work just a few miles from where the
8 IP address of the fake press release email was traced, near Glendale Heights, Illinois. See
9 Complaint Exhibit C. Mr. Binning's company, LakeFront Strategies, is located in Glendale
10 Heights. According to the Complaint, the LakeFront Strategies website was disabled soon after
11 press reports of the fake press release email emerged. Complaint at 2. In addition, the
12 Complaint alleges that the "tweet" from "LF Strategies," similar to the name of LakeFront
13 Strategies, was critical of Mr. Eckersley and encouraged individuals to follow the fake Scott
14 Eckersley Twitter account. *Id.* According to the Complaint, this tweet was deleted immediately
15 after the media began to report on the fraudulent press release. *Id.* The Complaint also states
16 that Mr. Binning is originally from Missouri and graduated from a small private high school with
17 the eldest daughter of Billy Long. *Id.* In addition, the Complaint states that Mr. Binning posted
18 a message on Mr. Long's Facebook page shortly after Mr. Long's primary election victory that

² The Commission recently approved a legislative recommendation concerning fraudulent misrepresentation as delineated in 2 U.S.C. § 441h. The recommendation proposes that Congress extend the section 441h(a) prohibition to "any person who would disrupt a campaign by such unlawful means, rather than being limited to candidates and their agents and employees." In addition, the recommendation proposes that Congress remove the requirement that the fraudulent misrepresentation must pertain to a matter that is "damaging" to another candidate or political party. See *2011 Legislative Recommendations of the Federal Election Commission*, approved March 16, 2011.

1 congratulated him on his victory and offered any assistance necessary during the general
2 election. *Id.*

3 On February 17, 2011, Complainant provided a Supplement to the Complaint that
4 contained additional information.³ See Attachment 1. Specifically, Complainant provided a list
5 of names of individuals Scott Eckersley suggests be contacted in an investigation. Complainant
6 also cited a press account purporting to describe false information spread during Billy Long's
7 primary election that a key opponent was withdrawing, causing that candidate to state publicly
8 that he was not doing so. See Chad Livengood, *Goodman Campaign Denies 'Rumor' He's*
9 *Getting out of Congressional Race*, Missouri Springfield News-Leader, November 4, 2009,
10 attached as Attachment 2. /

11
12 The Long Response asserts that the candidate, the Committee, and its consultant James
13 Harris, had no involvement with the distribution of the press release to the media and had no
14 knowledge of the press release prior to its distribution to the media. The response includes
15 sworn statements from Messrs. Long, Harris, and Neville each stating "I had no involvement
16 with the distribution of the Press Release to the media and had no knowledge of the Press
17 Release prior to its distribution to the media." See Affidavits of Billy Long, James Harris, and
18 Ron Neville. These sworn statements, however, would not cover other individuals associated
19 with Billy Long for Congress, such as other employees and agents of the campaign.

³ We received the Supplement after we contacted Complainant to ask for clarification regarding five pages of Virginia law included in Complaint Exhibit D that did not appear to be relevant to this matter. Complainant stated that the inclusion of the five pages was inadvertent and volunteered that he had additional information to provide by way of a Supplement to the Complaint. The Supplement does not contain any new allegations with respect to the identified Respondents.

12044322124

1 Patrick J. Binning, who the Complaint alleges had connections to the Long campaign,
2 states in his response that he does "not admit to or deny any of the allegations brought against"
3 him. He also asserts in an unsworn statement that he was never a member, agent, or employee of
4 Billy Long for Congress and never received any form of payment or compensation from
5 Billy Long or the Committee. The Committee's disclosure reports confirm that the Committee
6 did not make any payments to either Mr. Binning or LakeFront Strategies.

7 In light of the seriousness of the potential violation at issue, we believe that some
8 investment of Commission resources is appropriate to determine who sent the fake email and set
9 up the fake Twitter account, and determine whether that person had any connection to the Long
10 committee or another candidate. We believe that the information we have, including
11 Complainant's supplemental information, makes it reasonably likely that we will be able to
12 identify through an investigation the person(s) that sent the fake press release email and set up
13 the fake Twitter account, both purportedly in the name of Scott Eckersley. Mr. Binning's
14 response could be read to suggest that he had at least some involvement. We are aware that
15 Respondents have denied the allegations and supplied affidavits, and based on Long and Harris's
16 sworn statements, we recommend that the Commission find no reason to believe as to them
17 individually. Still, we believe that the seriousness of the alleged violation justifies a limited
18 investigation to determine all the relevant facts regarding the false communications and then
19 decide whether these facts establish or disprove a 2 U.S.C. § 441h violation as to the Long
20 Committee or another candidate or committee.

21 Accordingly, we recommend that the Commission find reason to believe that Unknown
22 Respondents violated 2 U.S.C. § 441h(a). See MUR 4919 (East Bay Democratic Committee)

12044322125

1 (the Commission found reason to believe that "persons unknown," who were responsible for a
2 flyer allegedly sent by a fictitious local party committee expressly advocating against a named
3 candidate of the same political party, knowingly and willfully violated 2 U.S.C. § 441d(a)),
4 MUR 5871 (Noe) (Commission found reason to believe against both Thomas Noe, the source of
5 funds in a 441f scheme, and "Unknown Respondents" who served as Noe's conduits in the
6 scheme), and MUR 6234 (Landrieu) (Commission found reason to believe that "Unknown
7 Respondents" may have violated 2 U.S.C. §§ 441a(a), 441b and/or 441f related to allegations of
8 contributions made in the name of another).

9 While Mr. Binning denies that he was an agent or employee of Billy Long for Congress,
10 there is circumstantial information possibly linking Patrick Binning and/or LakeFront Strategies
11 to the fake press release email and the Twitter account. In addition, Mr. Binning does not deny
12 the allegations lodged against him, instead framing his response as neither an admission nor a
13 denial. Further, the affidavits attached to the Long Response do not foreclose the possibility that
14 other agent(s) or employee(s) of the Committee may have been involved. It is possible that
15 Mr. Binning and/or LakeFront Strategies conspired to participate in a scheme or plan with an
16 agent or employee of the Committee in violation of 2 U.S.C. § 441h(a)(2).

17 Accordingly, we recommend that the Commission take no action at this time with respect
18 to Patrick J. Binning and LakeFront Strategies. Additionally, we recommend that the
19 Commission find no reason to believe that Billy Long or James Harris violated 2 U.S.C.
20 § 441h(a) in their individual capacities. Finally, we recommend that the Commission take no
21 action at this time with respect to Billy Long for Congress and Ron Neville, in his official
22 capacity as treasurer.

12044322126

III. PROPOSED DISCOVERY

We propose an investigation to determine the identity of the Unknown Respondents who set up : and the purported fake Twitter account and sent the purported fake press release email, and to determine whether the Unknown Respondents were agents or employees of Billy Long or any other federal candidate. '

Accordingly, we recommend

that the Commission authorize the use of compulsory process. Further, supplemental information received from the Complainant on February 17, 2011, provides additional information we may be able to use in determining the identity of those persons involved in sending the fake press release email and setting up the fake Twitter account. See Attachment 1.

IV. RECOMMENDATIONS

1. Find reason to believe that Unknown Respondents violated 2 U.S.C. § 441h(a).
2. Take no action at this time with respect to Patrick Binning or LakeFront Strategies.
3. Find no reason to believe that Billy Long violated 2 U.S.C. § 441h(a).
4. Find no reason to believe that James Harris violated 2 U.S.C. § 441h(a).
5. Take no action at this time with respect to Billy Long for Congress and Ron Neville, in his official capacity as treasurer.
6. Authorize the use of compulsory process in this matter.
7. Approve the attached Factual and Legal Analysis.
8. Approve the appropriate letters.

Christopher Hughey
Acting General Counsel

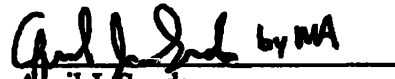
BY:



Stephen A. Gura
Deputy Associate General Counsel
for Enforcement



Mark Allen
Assistant General Counsel



April J. Sands
Attorney

5/6/11
Date

Attachments:

1. February 17, 2011 Supplement to the Complaint
2. Chad Livengood, *Goodman Campaign Denies 'Rumor' He's Getting out of Congressional Race*, Missouri Springfield News-Leader, November 4, 2009
- 3.

Goodman campaign denies 'rumor' he's getting out of congressional race Springfield News-Leader (Missouri) November 4, 2009 Wednesday

Copyright 2009 Springfield News-Leader (Springfield, MO)
All Rights Reserved
Springfield News-Leader (Missouri)

November 4, 2009 Wednesday

SECTION: BLOGS; Pg. NaN

LENGTH: 456 words

HEADLINE: Goodman campaign denies 'rumor' he's getting out of congressional race

BYLINE: Chad Livengood

BODY:

clivengood@news-leader.com

The congressional campaign of state Sen. Jack Goodman is dispelling what it calls a "rumor" that he might get out of the 2010 Republican primary to succeed Rep. Roy Blunt in the U.S. House.

"It is just a rumor," Goodman campaign manager Miles Ross said Wednesday night. "No way Jack would ever get out of the race. Jack is in it for the long haul because we plan on winning this race."

Goodman, R-Mount Vernon, is seen as one of the top contenders in next year's Republican primary against three other GOP heavyweights - state Sen. Gary Nodler of Joplin, Springfield politician Billy Long and Greene County Prosecutor Darrell Moore.

Other lesser-known candidates include Ozarks Technical Community College instructor Jeff Wisdom, Nixa businessman Michael Wardell and Mike Moon, a Lawrence County resident and membership coordinator for St. John's Hospital's fitness centers.

The 7th District seat became open earlier this year when Blunt announced he would run for the U.S. Senate in 2010 with hopes of succeeding longtime Sen. Kit Bond, who is retiring after next year. Blunt will face state Sen. Chuck Bargasoa of Howell County and possibly other lesser-known Republicans in an August 2010 primary.

The belief in 7th District GOP political circles is that Nodler would benefit from Goodman exiting the race by being able to consolidate support in Goodman's state Senate district, which includes Lawrence, McDonald, Stone and Taney counties. Nodler represents a Senate district that includes Jasper and Newton counties in the 7th Congressional District.

On Tuesday, Blunt's former chief of staff, Gregg Hartley, announced on Twitter that he was backing Nodler in the race - fueling speculation that Nodler is consolidating support in anticipation of one of the major candidates getting out.

"I support Gary Nodler and will actively work with him in SW Missouri to ensure his election; I urge others to join this important campaign."

href="http://twitter.com/gregghartley/status/5412407293">Hartley wrote on his Twitter page.

Hartley is now a Washington, D.C.-based registered lobbyist and no longer lives in Missouri.

Goodman has amassed team of political veterans to run his campaign, including media consultant John Thompson of Thompson Communications in Marshfield.

With Long in the fundraising lead, local political observers say Goodman and Nodler are likely to be going neck-and-neck in the coming months. The behind-the-scenes political battle will likely become more public during the 2010 session.

Nodler has remained mum on whether he will step down as chairman of the powerful Senate Appropriations Committee.

"That question will be answered very soon," Nodler told the News-Leader during an Oct. 26 interview.

LOAD-DATE: November 5, 2009

Source: News & Business > Combined Sources > News, All (English, Full Text) [1]

Terms: goodman campaign denies rumor he's getting out of congressional race (Edit Search | Suggest Terms for My